ll II			
1	EDMUND G. BROWN JR., Attorney General		
2	of the State of California ARTHUR D. TAGGART		
3	Supervising Deputy Attorney General STERLING A. SMITH, State Bar No. 84287		
4	Deputy Attorney General California Department of Justice		
	1300 I Street, Suite 125 P.O. Box 944255		
5	Sacramento, CA 94244-2550	·	
6	Telephone: (916) 445-0378 Facsimile: (916) 327-8643		
. 7	Attorneys for Complainant		
8			
9	BEFORE 7	гне	
10	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS		
11	STATE OF CAL		
12		1 6 3 9	
13	In the Matter of the Accusation Against:	Case No. 2009-9	
14	MALINTHA K. LARSEN, AKA MALINTHA K. WINWOOD, AKA	ACCUSATION	
15	MALINTHA KELLY WINWOOD 21435 Parrot Ranch Road		
16	Carmel Valley, CA 93924		
17	Registered Nurse License No. 378554		
	Respondent.		
· 18			
19	Complainant alleges:		
20	<u>PARTIES</u>		
21	1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation		
22	solely in her official capacity as the Executive Officer of the Board of Registered Nursing		
23	("Board"), Department of Consumer Affairs.		
24	2. On or about August 31, 1984, the Board issued Registered Nurse License		
25	Number 378554 to Malintha Kelly Winwood, also known as Malintha K. Winwood, and		
26	Malintha K. Larsen ("Respondent"). The registered nurse license will expire on August 31,		
27	2008, unless renewed.		
28	<i>/</i> ///		
		. •	

STATUTORY PROVISIONS

- 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.
 - 4. Code section 2725 states, in pertinent part:
 - (b) The practice of nursing within the meaning of this chapter means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:
 - (1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.
 - (2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.
 - (4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.
- 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
 - 6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

///

1	(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.	
2	needsed hursing functions.	
3	7. Code section 2762 states, in pertinent part:	
4	meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct	
5		
6	(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to	
7	himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety	
8	Code or any dangerous drug or dangerous device as defined in Section 4022.	
9	(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.	
11	8. Code section 4060 provides, in pertinent part,	
12	No person shall possess any controlled substance, except that furnished to	
13	pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.	
14		
15		
16		
17	9. Health and Safety Code section 11173, subdivision (a), provides:	
18	No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled	
19	substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.	
20	REGULATORY PROVISIONS	
21	10. California Code of Regulations, title 16 ("Regulation"), section 1442	
22	states:	
23	As used in Section 2761 of the code, 'gross negligence' includes an	
24	extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an	
25	extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation	
26	which the nurse knew, or should have known, could have jeopardized the client's health or life.	
27	/// :	
28	///	
ı		

COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

- 12. "Morphine" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M), and is a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.
- 13. "Zofran", a brand name for ondansetron, is a dangerous drug within the meaning of Business and Professions Code section 4022, in that it requires a prescription under federal law.

BACKGROUND

- 14. At all times herein mentioned, Respondent was employed as a registered nurse at Salinas Valley Memorial Healthcare System ("SVMH") in Salinas, California.
- 15. On or about April 5, 2005, while working at SVMH in the radiology department, Respondent administered Zofran to Patient A without a physician's order.
- 16. While working at SVMG, between 2001 to April 2005, Respondent diverted morphine from hospital supplies for her own use, including but not limited to, Respondent's diversion of a 10 mg. ampoule of Morphine that Respondent signed out under a patient's name in or around March 2005 or April 2005.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

17. Respondent's registered nurse license is subject to disciplinary action under Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about April 5, 2005, while working at SVMH as a registered nurse, Respondent was guilty of gross negligence as set forth above in paragraph 15, within the meaning of Regulation 1442, by administering Zofran, a dangerous drug, to a patient without a physician's order.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. Respondent's registered nurse license is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, in that between 2001 and April 2005, while on duty as a registered nurse at SVMH, Respondent committed acts constituting unprofessional conduct, as set forth above in paragraphs 15 and 16.

THIRD CAUSE FOR DISCIPLINE

(Obtain and Possess a Controlled Substance in Violation of Law, and Self-Administer)

- 19. Respondent's registered nurse license is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in Code section 2762, subdivision (a), in that between 2001 and April 2005, Respondent did the following:
- a. Respondent possessed Morphine, a controlled substance, in violation of Code section 4060.
- b. Respondent self-administered Morphine, a controlled substance, without direction from a licensed physician, surgeon, dentist or podiatrist.
- c. Respondent obtained Morphine, a controlled substance, by fraud, deceit, misrepresentation or subterfuge, or the concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), by taking the drug from hospital supplies for her own personal use.
- d. On or about April 5, 2005, Respondent administered Zofran, a dangerous drug, to a patient without a physician's order.

FOURTH CAUSE FOR DISCIPLINE

(False, Grossly Inconsistent or Unintelligible Entries in Hospital or Patient Records)

20. Respondent's registered nurse license is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (e), in that in or around March 2005 or April 2005, while on duty as a registered nurse at SVMH, California, Respondent falsified or made grossly incorrect,

1	grossly inconsistent or unintelligible entries in hospital or patient records, by signing out a 10		
2	mg. ampule of Morphine under a patient's name, and then taking the Morphine for her own use.		
3	<u>PRAYER</u>		
4	WHEREFORE, Complainant requests that a hearing be held on the matters		
5	herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:		
6	1. Revoking or suspending registered nurse license Number 378554, issued		
7	to Malintha Kelly Winwood, also known as Malintha K. Winwood, and Malintha K. Larsen;		
8	2. Ordering Malintha Kelly Winwood, also known as Malintha K. Winwood,		
9	and Malintha K. Larsen, to pay the Board of Registered Nursing the reasonable costs of the		
10	investigation and enforcement of this case, pursuant to Code section 125.3; and,		
11	3. Taking such other and further action as deemed necessary and proper.		
12	DATED: 714108		
13			
14	RUTH ANN TERRY, M.P.H., R.N.		
15	Executive Officer Board of Registered Nursing		
16	Department of Consumer Affairs State of California		
17	Complainant 03579110-SA2008301133		
18	Larsen. Acc. wpd baf [5/29/08]		
19			
20			
21			
22			
23			
24			
25			
26			
27			